

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen/Division of TCU

PARTIES TO DISPUTE: (

(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

1. That the Elgin, Joliet and Eastern Railway Company violated Rule 100 of the working Agreement when letters of discipline were placed in the personal files of Carmen R. Leyba and C. Thomas after a meeting with Mr. H. D. Stephenson, Manager, M. of E. Department, on October 9, 1987 and October 7, 1987, respectively.

2. That the Elgin, Joliet and Eastern Railway Company be ordered to remove the letters of discipline from the personal files of each Carman and, further, be ordered to cease this practice and abide by the provisions of Rule 100.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claim at bar represents two separate Claims. In the first instance Claimant Leyba was instructed to present himself to the Manager on September 9, 1987. He was told that the purpose was to review his personal injury record with the Carrier. A transcript of that conversation was taken with a copy provided to the Claimant. In addition, Carrier included the transcript and Memo in the Claimant's personnel file. In the second instance Claimant Thomas was called to Carrier's office on October 7, 1987, to review his record of ten personal injuries. A letter dated October 12, 1987, regarding that conversation was put in Claimant's personnel file.

The Organization filed Claims contending that Carrier had violated Rule 100, by disciplining Claimants without a fair hearing. By letter of May 18, 1988, it informed the Carrier in strong language that it considered its action as discipline without an Investigation. It requests this Board to order the Carrier to cease the practice and to have the letters removed.

The Carrier denies that its actions were discipline arguing that it has the right to review with Claimants their injuries, rules of safety and to confirm such meetings in writing. It further argues that such meetings are conducted for counseling purposes with the letters confirming discussions held. The Carrier denies any violation of Rule 100.

As a preliminary point, this Board notes that there is variance between the Claims as processed on the property and the Claim before this Board. Specifically, the Claim has been enlarged to ask this Board to not only remove the letters, but also that the Carrier "be ordered to cease this practice...".... As we stated in Second Division Award 11658, "this Board has no authority to issue declaratory judgements" (Second Division Awards 11135, 10954, 10708).

On merits, Rule 100 requires that the Carrier have an Investigation before discipline is assessed. The central issue herein is whether the Claimants were disciplined by the transcript and/or letter put in their files. This Board has held that where such letters contain content which is primarily accusatory, with findings of fact that the employee is guilty of certain conduct, then they are in fact reprimands or discipline (Second Division Awards 7588, 9412, 10694, 11249). However, where such letters are in fact warnings for the purpose of counseling employees, they are personnel actions, rather than discipline (Second Division Awards 8062, 8531, 9522, 10836, 11683; Third Division Awards 24953, 27807, 27805).

In the facts and circumstances of these cases, the Carrier did not reprimand either Claimant. Both were informed of their past record and the importance of safety. No language directed toward the Claimants accuses them of any Agreement violations or can be construed as discipline. There is no probative evidence in this record that Carrier's actions violated Rule 100.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1990.